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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JOHN SINIBALDI, on behalf of himself and
12 all others similarly situated,

No. C 11-01761 MMC

13 Plaintiff,

14 v.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND STRIKE;
TRANSFERRING ACTION TO CENTRAL
DISTRICT OF CALIFORNIA**

15 REDBOX AUTOMATED RETAIL, LLC, and
16 Does 1 through 100, inclusive,

Defendants.

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18 Before the Court is defendant Redbox Automated Retail, LLC's ("RedBox") motion to
19 dismiss and to strike, filed May 2, 2011. Plaintiff John Sinibaldi ("Sinibaldi") has filed
20 opposition, to which Redbox has replied. Having read and considered the papers filed in
21 support of and in opposition to the motion, the Court deems the matter suitable for decision
22 on the parties' respective submissions, VACATES the hearing scheduled for June 24,
23 2011, and rules as follows.

24 By the instant motion, Redbox seeks, inter alia, to dismiss the action in favor of
25 Mehrens v. Redbox Automated Retail, LLC, No. 11-2936 JHN-E, an earlier-filed putative
26 class action pending before the Central District of California. See Pacesetter Sys., Inc. v.
27 Medtronic, Inc., 678 F.2d 93, 94-95 (9th Cir. 1982) (noting "first to file" rule "permits a
28 district court to decline jurisdiction over an action when a complaint involving the same

1 parties and issues has already been filed in another district"). Sinibaldi "does not oppose
2 transfer of this action to the Central District based on the first-to-file rule" (see Opp. at 2:11-
3 12), but opposes dismissal, stating:

4 Following discussions between counsel, an agreement was reached
5 between my firm and counsel in Mehrens to cooperate in the joint
6 prosecution of both actions, and to jointly request consolidation of said
actions pursuant to Federal Rule of Civil Procedure 42(a) following
transfer of this action to the Central District Court

7 (see Qualls Decl. ¶ 5).

8 "Under [the first to file] rule, when cases involving the same parties and issues have
9 been filed in two different districts, the second district court has discretion to transfer, stay,
10 or dismiss the second case in the interest of efficiency and judicial economy." Cedars-Sinai
11 Medical Center v. Shalala, 125 F.3d 765, 769 (9th Cir. 1997). Here, given the above-
12 referenced agreement, the Court finds transfer to the Central District of California is
13 preferable to dismissal. See A.J. Indus. Inc. v. U.S. Dist. Ct. for C.D. Cal., 503 F.2d 384,
14 389 (9th Cir. 1974) (noting "feasibility of consolidation is a significant factor in a transfer
15 decision"). Redbox's concerns about the effect of a transfer on the Central District's
16 existing schedule (see Reply at 5) are best addressed by the Central District.

17 Accordingly, Redbox's motion to dismiss and to strike is hereby DENIED, and the
18 instant action is hereby TRANSFERRED to the Central District of California.¹

19 **IT IS SO ORDERED.**

20 Dated: June 15, 2011


MAXINE M. CHESNEY
United States District Judge

27 ¹ To the extent the motion is based on "alternative" grounds (see Mot. at 12-21),
28 said denial is without prejudice to Redbox's raising those issues, if necessary, in the
Central District.